

March 1, 2004

Testimony of Debra Davidson
Maine Chapter - Izaak Walton League of America
P.O. Box 103
Livermore Falls, Maine 04254

Re: Proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No.OAR-2002-0056, 69 Fed. Reg. 4652 (January 30, 2004).

I would like to thank Tom Allen for giving Maine the opportunity to voice our concerns about hazardous air pollutant emissions from power plants, in particular mercury emissions.

My name is Debi Davidson and I am here today as a representative of the Maine Chapter of the Izaak Walton League of America. We are a national organization of 50,000 anglers, hunters and conservationists committed to responsible environmental stewardship.

I have attached a letter to my testimony, signed by the directors of midwest sportsmen's organizations including the Izaak Walton League of America, and representing over 400,000 people in Minnesota, Wisconsin, Michigan, Iowa, Illinois, Indiana, and Ohio asking the environmental Protection Agency to strengthen their proposed rule.

Mercury contamination threatens Maine's fishing heritage. Residents in Maine share a long tradition of outdoor recreation centering on our lakes, ponds and rivers. We are a region of camp owners, fishermen, hunters, and outdoor enthusiasts whose lakes and woods represent a large part of who we are. Unless we eliminate mercury pollution from our lakes, ponds, streams and rivers, we cannot safely eat our fish if we choose to. Even if catch and release is one way to enjoy fishing, we should not have to limit ourselves to this method. The effects of mercury pollution on an ecosystem very much affects the quality of a total fishing experience. Warnings about eating fish due to mercury contamination very much detracts from this experience.

Mercury contamination threatens Maine's economy. While fishing in Maine is clearly a long-standing tradition, it is also big business. Figures show that recreational anglers who fish in our state spend more than \$250 million dollars annually. This includes everything from fishing lures to special clothing to food, lodging and transportation for the trips we take. Economically, Maine cannot afford a contaminated fishery.

We can do better. Mercury contamination of fish in our lakes and rivers is a serious concern for our members and their families. The current EPA proposal falls far short of what is needed to address this threat. EPA's mercury MACT proposal fails to accomplish what is mandated by the Clean Air Act for mercury reduction. And the alternative New Source Performance Standard proposal is a poor substitute to an adequate mercury MACT standard.

We believe that the proposed mercury MACT rule should require emissions reductions from all coal-fired power plants by 2008 equivalent to the level that can be achieved by the most up-to date pollution controls and resulting in at least a 90 percent reduction in power plant mercury emissions nationwide. The technology to achieve these reductions is being developed and installed in Midwest plants right now.

The EPA should revise the mercury MACT proposal to meet the Clean Air Act's obligation to require the most up-to-date pollution controls on all power plants. The EPA should also reject the alternative New Source Performance Standard proposal and all mercury trading proposals.

The Maine Chapter of the Izaak Walton League asks that the EPA adopt a rule that maximizes the protection of human health and our fisheries by regulating mercury emissions to the level that we know is technologically feasible and to please do so now.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Debi Davidson".

Debi Davidson

February 25, 2004

Administrator Mike Leavitt
United States Environmental Protection Agency
EPA Docket Center (Air Docket)
U.S. EPA West (6102T)
Room B-108
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Proposed National Emission Standards for Hazardous Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Docket ID No.OAR-2002-0056, 69 Fed. Reg. 4652 (January 30, 2004).

Dear Administrator Leavitt:

Sporting groups from Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin have worked for years to reduce mercury pollution and protect the health of our families. Today, we write to respectfully express our concerns over the proposed rule by the U.S. Environmental Protection Agency (EPA) to control mercury emissions from coal-fired power plants.

Fishing has been a tradition in the Midwest for generations, and sporting groups have been conserving fish habitat for decades. It has been an important part of family life and a bond between parents and children. Fishing is also important for our businesses, with sport-fishing adding \$5 billion to our states' economies annually.

Unfortunately, all of our states are under statewide fish consumption advisories due to widespread mercury contamination. Catch and release is not just a choice anymore, it is a practice we must observe to safeguard the health of our children and grandchildren.

Power plants are one of the largest sources of mercury pollution in the Midwest. Twenty-three percent of the nation's coal-fired power plant mercury emissions come from the six states of Indiana, Illinois, Michigan, Minnesota, Ohio and Wisconsin. In order for anglers to once again catch fish that are safe to eat, it is critical that we significantly reduce emissions from coal plants in these states.

Mercury contamination of fish in our lakes and rivers is a serious concern for our members and their families, but the current proposal falls far short of what is needed to address this threat. We know that existing plants using the best modern technology can achieve mercury reductions of up to 90 percent. The technology to achieve these reductions is being developed and installed in

plants right here in the Midwest. We urge the EPA to adequately address our mercury problem by greatly strengthening the proposed mercury rule under section 112 of the Clean Air Act for plants burning all types of coal. We further urge the agency to reject alternative New Source Performance Rule in place of a MACT standard.

Mercury and Fish Consumption Advisories

The entire Midwest is affected by mercury contamination to such a large extent that state health departments have issued fish consumption advisories specifically for mercury. Indiana, Illinois, Minnesota, Michigan, Ohio and Wisconsin all have blanket statewide fish consumption advisories for mercury. In addition, Lake Superior and Lake Michigan have fish consumption advisories because of mercury contamination.

Relying on fish consumption advisories, however, will not solve the problem. We must reduce the contamination at its source. Surveys of anglers in the Northeast, Southeast and Great Lakes have revealed that many anglers may have heard about the advisories, but anglers with lower income levels fish more often, eat more fish they catch as part of their diet, and are generally less aware of advisories than other anglers.^{1,2,3,4} In addition, relying only on advisories to address the mercury problem leaves a legacy of contaminated fish our future generations.

Safe-to-eat Fish is Important to Our Families

Women of childbearing age and pregnant women are the most important members of the population in terms of mercury exposure. Methylmercury interferes with the development and function of the nervous system. It poses the greatest hazard to the developing fetus. This is the reason most fish consumption advisories warn pregnant women to limit their fish consumption or avoid fish altogether. However, infants and children are also at high risk. Infants may ingest methylmercury through nursing and children are exposed through their diet. Children and infants are more sensitive to the effects of mercury because their nervous systems continue to develop until about age 14.

Mercury threatens the health of older fishermen, too. New evidence suggests exposure to methylmercury can adversely impact blood pressure regulation, heart-rate variability, and heart disease.^{5,6}

¹ Burger, J.; W.L. Stephens, Jr.; C.S. Boring; M. Kuklinski; J.W. Gibbons; M. Gochfeld. 1999. Factors in exposure assessment: ethnic and socioeconomic differences in fishing and consumption of fish caught along the Savannah River. *Risk Analysis*, Jun; 19(3):427-38.

² Musham, C.; C.W. Waring III; R. DuBose Lusk. Fishing in Berkeley County Fresh-Water Waterways. Consumption Patterns and Contamination Risk Awareness. Environmental Bioscience Program, Medical University of South Carolina. November 1999.

³ Northeast States for Coordinated Air Use Management. Northeast Fish Consumption and Mercury Awareness Survey. 1999.

⁴ Tilden, J.; L.P. Hanrahan; H. Anderson; C. Palit; J. Olsen; and W.M. Kenzie 1997. Health advisories for consumers of Great Lakes sportfish: is the message being received? *Environ. Health Perspectives*. Dec;105(12):1360-5.

⁵ Hightower, J.M. 2002. Mercury levels in high-end consumers of fish. *Envr. Health Perspect.* Ephoneline.org, November 1, 2002.

⁶ Guallar, E. et al., 2002, Mercury, fish oils and the risk of myocardial infarctions. *New England J. of Med.*, Vol. 347, No. 22.

Fishing is an Important Tradition in the Midwest

Residents in the Midwest share a rich tradition of outdoor recreation centering on our lakes and rivers. We are a region of cabin owners, fishermen, hunters, and outdoor enthusiasts whose lakes and woods are as much a part of who we are as our agriculture, snow and fall foliage. If there is one thing we love as much as catching fish, it is eating fish. The fish fry and shore lunch are beloved traditions in the Midwest.

The ability to pass our traditions on to future generations is threatened by mercury contamination. Unless we eliminate mercury pollution from our lakes, streams and rivers, our children's children may not be able to safely eat fresh bass, walleye, or northern pike – the fish most heavily contaminated.

Fishing is Important to Our Economy

Fishing in our states is big business. With the Great Lakes, cold-water streams, and tens of thousands of lakes, it is no wonder fishing is so popular. Sportfish like largemouth bass, smallmouth bass, yellow perch, walleye, northern pike and muskie are just a few of many sought-after species. According to the U.S. Fish and Wildlife Service, more than 7.87 million anglers fish in our states and spend more than \$5 billion annually.⁷ This includes everything from fishing lures to special clothing to food, lodging and transportation for the trips we take. Our region simply cannot afford a contaminated fishery.

But the value of fishing cannot just be measured in dollars. Although less tangible and difficult to quantify, the effects of mercury pollution on an ecosystem can affect the quality of the fishing experience. A survey of anglers underscores the importance of the social aspects of fishing.⁸ Some of the main reasons that people fish are to relax, to spend time with family and friends, and to be close to nature. Warnings about eating fish due to mercury contamination detract from this experience. Reducing environmental contaminants like mercury must be a goal so we can continue to conserve and protect this resource.

Why is Mercury From Power Plants a Problem?

Coal-fired electric power plants remain the largest uncontrolled source of mercury in the U.S. Each year, uncontrolled coal-fired power plants in the U.S. emit nearly 50 tons of mercury to the air⁹ in addition to an estimated 33 tons disposed of in waste left over after power plants burn coal.¹⁰ EPA estimates that coal-fired power plants alone account for 42 percent of all U.S. mercury air emissions. Municipal, medical and hazardous waste combustors – which are stringently regulated by the EPA – account for about ten percent of U.S. air emissions. Industrial

⁷ U.S. Department of the Interior, Fish and Wildlife Service. U.S. Department of Commerce, U.S. Census Bureau. 2001. National survey of fishing, hunting, and wildlife associated recreation. FHW/01-Nat. October 2002. Tables 55 and 64.

⁸ The Future of Fishing in the United States: Assessment of Needs to Increase Sport Fishing Participation. November 1999. Conducted by Responsive Management National Office.

⁹ www.epa.gov/ttn/atw/combust/utltoxt/utoxpg.htm. File name: plant_set_state

¹⁰ www.epa.gov/tri

boilers are responsible for ten percent and chlorine manufacturers for six percent. The remaining third is made up of incidental use and products containing mercury.

Existing coal-fired power plants not only remain uncontrolled, but if left virtually unregulated, over time they will account for a larger and larger share of mercury emissions, as other source categories meet their obligations to reduce their mercury releases.

Coal-fired power plants are found throughout the Midwest. According to the EPA's Toxics Release Inventory (TRI), coal-fired power plants in Minnesota, Wisconsin, Michigan, Illinois, Indiana and Ohio together account for 23 percent of mercury emissions from all coal-fired power plants in the U.S. Because mercury does not degrade when released and because the typical coal plant operates for at least 50 years, the accumulation of mercury released by these plants makes them the most widespread, large-scale, long-lived generators of mercury in the U.S.

Mercury is emitted from the stacks of coal-fired power plants, and although it can remain in the atmosphere for up to one year, a great deal of mercury is deposited on land and water bodies within 50 miles of the plant. In addition to being a significant concern in the areas closest to the plants, the deposition and reemission makes mercury pollution a regional and global problem. However, we cannot wait for international cooperation before we start addressing the emission and deposition problems that occur in the United States.

After mercury is deposited from the atmosphere, its greatest adverse impact occurs in the aquatic ecosystem. In a series of chemical reactions, bacteria in the sediments can convert mercury to methylmercury. Methylmercury is a form of mercury that is especially toxic to humans and wildlife. Fish absorb methylmercury from the water as it passes over their gills and as they feed on other organisms. As larger fish eat smaller fish, methylmercury concentrations increase in the bigger fish, a process known as bioaccumulation. Consequently, larger predator fish usually have higher concentrations of methylmercury from eating smaller contaminated fish. Humans, birds and other wildlife that eat fish are exposed to mercury in this way.

EPA MACT Proposal is Inadequate

EPA's mercury MACT proposal fails to accomplish what is mandated by the Clean Air Act for mercury reduction. Further, the alternative New Source Performance Standard proposal is a poor substitute to an adequate mercury MACT standard.

We contend that the proposed mercury MACT rule should require emissions reductions from all coal-fired power plants by 2008 that are equivalent to the level that can be achieved by the most up-to-date pollution controls. Based on data collected by the EPA, that would result in at least a 90 percent reduction in power plant mercury emissions nationwide.

By contrast, as proposed, EPA's MACT rule will only require an overall 30 percent cut in emissions, and that not until 2010 at the earliest. In addition, most of the reductions will come from power plants that burn eastern bituminous coal, while requiring very little emission reductions from power plants that burn western subbituminous coal. As a result, states like Minnesota, Wisconsin, Michigan, and Illinois, whose plants use a significant amount of western coal will see even more limited mercury reductions. Plants in Ohio and Indiana that use mostly

eastern bituminous coal would have an incentive to switch to western coal. This could have the perverse effect of potentially increasing local emissions of mercury from plants in Ohio and Indiana. It would also create further strain on the coal industry in the eastern U.S.

The proposed alternative New Source Performance Standard (NSPS) rule would eventually require deeper reductions, but not for more than a decade and not to the levels mandated under a MACT approach. The NSPS alternative also creates different standards for different coal types and allows for some electric utilities to avoid making any mercury reductions, by allowing mercury trading. Treating coal types differently and allowing for trading raises the risk of increasing local emissions, exacerbating the problem of existing mercury hotspots, and creating new mercury hot spots in the Midwest.

The EPA should revise the mercury MACT to meet the Act's obligation to require the most up-to-date pollution controls on all power plants – regardless of the type of coal that they use – and by so doing achieve stringent and rapid reductions in emissions of this toxic pollutant. The EPA should also reject the alternative NSPS and all mercury trading proposals. These alternatives would cause additional mercury related adverse health risks through the promotion of pollution trading, and would allow unacceptable amounts of mercury pollution to continue.

We respectfully urge the EPA to adopt a rule that maximizes the protection of human health and our fisheries by regulating mercury emissions to the level that we know is technologically feasible and to do so quickly.

Sincerely,

Jim Bahl
President
Minnesota Conservation Federation
St. Paul, Minnesota
3,000 members

Danny J. Blandford
Conservation Director
Indiana BASS Federation
Martinsville, Indiana
3,000 members

Jim Doss
President
Ohio BASS Federation
Gallipolis, Ohio
1,800 members

Paul Hansen
Executive Director
Izaak Walton League of America

St. Paul, Minnesota
13,000 members in Midwest states of MN, WI, MI, IL, IN and OH;
50,000 members nationwide

Mike Hofmann
President
Wisconsin State BASS Federation
Weston, Wisconsin
1100 members

Brad Maurer
President
Ohio Smallmouth Alliance
Bexley, Ohio
160 members

Edward L. Michael
Chairman
Illinois Council of Trout Unlimited
Oak Brook, Illinois
3,000 members

Larry Mitchell Sr.
President
League of Ohio Sportsmen
Columbus, Ohio
LOOS and its member clubs represent about 200,000 Ohio sportsmen and women

George Meyer
Executive Director
Wisconsin Wildlife Federation
Madison, Wisconsin
Representing 83 Wisconsin hunting, fishing, and trapping organizations

Kim Olson
New Ulm Area Sport Fishermen
New Ulm, Minnesota
150 members

Bill Pielsticker
Chairman
Wisconsin Council of Trout Unlimited
Madison, Wisconsin
4000 members

Russ Ruland
DNR Liaison & Past President
Muskellunge Club of Wisconsin
Hales Corners, Wisconsin
130 members

Scott Sparlin
Executive Director
Coalition for a Clean Minnesota River
New Ulm, Minnesota
600 members

Vern Wagner
Conservation Director
Minnesota BASS Federation
Champlin, Minnesota
14,000 B.A.S.S. members in Minnesota and 650 enrolled in the Minnesota B.A.S.S. Federation

Jay Walton
Iowa BASS Federation Conservation Director (4,000 member affiliation)
Iowa Conservation Alliance Board (50,000 member affiliation)
Ames, Iowa

Sam Washington
Executive Director
Michigan United Conservation Clubs
East Lansing, Michigan
A network of nearly 100,000 men and women and over 500 affiliated conservation and outdoor recreation clubs

Paula Yeager
Executive Director
Indiana Wildlife Federation
Carmel, Indiana
20,000 members

LITIGATION FORM

Please return to:

IZAACK WALTON LEAGUE OF AMERICA
ATTN: Executive Director
707 Conservation Lane
Gaithersburg, MD 20878-2983

For National Office Use Only

APPROVED: _____

DISAPPROVED: _____

DATE: _____

PLEASE TYPE OR PRINT CLEARLY

1. Name of ALL Plaintiffs:

Izaak Walton League of America, National Wildlife Federation, Natural Resources Council
of Maine. National Environmental Trust.

(a) Name of Plaintiff's Attorney (s), (include full address and telephone number):

Ann Brewster Weeks
Counsel and Legal Director
Clean Air Task Force
77 Summer Street, 8th Floor
Boston, MA 02110
(617) 292-0234

Neil S. Kagan
Senior Counsel
National Wildlife Federation
Great Lakes Natural Resource Center
506 East Liberty Street
Ann Arbor, MI 48104
(734) 769-3351

2. Name of ALL Defendants:

Michael Leavitt, Administrator, United States Environmental Protection Agency and
United States Environmental Protection Agency

(a) Name of Defendant's Attorney (s), (include full address and telephone number):

Assistant Attorney General, Thomas Sansonetti, will assign an attorney to
represent Leavitt and the U.S. EPA. No assignments have been made at this
time.

3. Nature of IWLA participation (i.e. plaintiff, intervenor, amicus curiae):

Plaintiff

(a) Name of ALL Intervenors:

The case will not be filed until some time after February 24, 2004. Intervention can occur after the case is filed. Therefore, as yet, the name of all intervenors is not known.

(b) Name of Intervenors Attorney (include full address and telephone number):

See above.

4. Nature of complaint and relief sought (cite facts, figures, dates, hearings, court cases, applicable statutes if known):

(a) Where is the specific injury or damage? (e.g. mineral exploration in a Wilderness Area):

Agency's failure to meet the statutory deadline for promulgation of final rules regulating hazardous air pollutants (including mercury) emitted by electric utility steam generating units by the statutory deadline of December 20, 2002. Since electric utilities are the largest domestic source of mercury emissions, failure to regulate these emissions in a timely manner poses serious hazards to public health and the environment.

(b) What are the immediate and long-range goals? (e.g. block exploration; overturn the 1872 Mining Act):

To achieve the District Court's declaration that the agency has failed to meet its mandatory duty to promulgate final Maximum Achievable Control Technology standards from hazardous air pollutant emissions from electric utility units, and that it failed to meet the mandatory deadline for such promulgation, which was December 20, 2002. The long range goal of the litigation is to establish a new enforceable deadline for the promulgation of final MACT standards for electric utility units.

- (c) What is the history of the case? Be specific – (e.g. EIS public hearing – 6/1/73, followed by Federal District Court suit initiated 8/15/73...):

Please see attached "Notice of Citizen Suit" letter.

- (d) Legal means to be employed to seek relief (e.g. preliminary injunction, temporary restraining order):

Declaratory judgment, court order setting new enforceable for final rules promulgation.

- (e) Where will this action be brought?

United States District Court for the District of Columbia.

- (f) Under what statutes are you bringing the claim for relief?:

42 U.S.C. §7604(b)(2) and 40 C.F.R. Part 54.3

5. Please include copies of all complaints, pleadings, briefs, memos, and related materials such as news clippings, letters, etc. List materials below:

Enclosed, please find the December 23, 2003, "Notice of citizen suit..." letter from Clean Air Task Force to Administrator Leavitt.

(Please continue to keep National informed of all action taken. Provide the attorney with National's address and direct him to forward copies of all relevant documents filed on the League's behalf)

6. (a) Cost estimate. Include attorney's fees, filing fees, witness and investigation fees, court costs, if assessed, and incidentals. Consult your attorney on potential financial exposure and report his opinion:

CATF is funded to do this work but may seek supplemental funding if the case goes to trial. Supplemental funding will most likely be raised by CATF and come from their funder.

(b) How will you raise the needed money?

See above.

7. Is this request for approval only?

Yes.

(a) If assistance beyond approval is desired, please state the probable nature and extent of the assistance required (i.e. money, publicity):

8. Is Board approval needed before the next regularly scheduled meeting? (January, April, July & October):

No.

9. Chapter or Division contact:

(With address and phone number)

January 6, 2004

(Date)

(Signature & address)

William Grant, Associate Executive Director

Izaak Walton League of America, Midwest Office

1619 Dayton Avenue, Suite 202

St. Paul, MN 55104

(651) 649-1446

(Telephone number)

billgrant@iwla.org

(E-Mail)